## UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,	§	
EX REL. JAMES OSBORNE,	§	
	§	
Plaintiff,	§	
<b>v.</b>	§	CIVIL ACTION NO.
	§	
HOMECARE PRODUCTS,	§	SA-06-CV-0746 NN
INCORPORATED d/b/a EZ ACCESS,	§	
DON EVERARD,	§	
DEANNE SONDVOLD,	§	
GELEDA EVERARD,	§	
JOHN HEATH,	§	
MISTY HEATH,	§	
BRIAN CLARK and	§	
AMERICAN ACCESS, INC.,	§	
	§	
Defendants.	§	

## ORDER GRANTING MOTION TO FILE AN AMENDED COMPLAINT

This order permits plaintiff James Osborne to file an amended complaint. On February 7, 2008, I ordered Osborne to show cause order why his claims against John and Misty Heath should not be dismissed for failure to serve.<sup>1</sup> I invited Osborne to file an amended complaint deleting John and Misty Heath if he was unable to serve John and Misty Heath. Osborne filed a late response, stating that his fourth amended complaint removed John and Misty Heath as defendants.<sup>2</sup> Osborne attached a copy of a document titled "plaintiff's fourth amended original complaint and jury trial demand" to his response.

Neither a third nor fourth amended complaint have been filed in this case, but I interpret

<sup>&</sup>lt;sup>1</sup>Docket entry # 40.

<sup>&</sup>lt;sup>2</sup>Docket entry # 41.

Osborne's response as a motion to file an amended complaint. Although the local rules for this district give a party 11 days to respond to a motion, I am granting the motion to amend without waiting for responses because the proposed amended complaint reflects the same essential claim as the live complaint and because little progress has been made in this case pending service on John and Misty Heath. The proposed amended complaint includes additional factual allegations,<sup>3</sup> but it brings the same cause of action—now specifically naming defendant Brian Clark and American Access as agents of defendant EZ Access. No prejudice will result to the defendants because the proposed complaint brings no new cause of action. By filing the complaint now, this case can proceed. The clerk of this court shall file the document attached to the plaintiff's response as the plaintiff's third amended complaint as of the date of this order.

It is so ORDERED.

**SIGNED** on February 27, 2008.

Mancy Stein Mowak
NANCY STEIN NOWAK

UNITED STATES MAGISTRATE JUDGE

 $<sup>^{3}</sup>$ See docket entry # 41, ¶¶ 14-5, 19 and 71-9.